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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 837

CHAS. C. STEWARD MACHINE COMPANY,
A CORPORATION,
Petitioner,

vs.

HARWELL G. DAVIS, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BORDEN BURR,
WALTER BOULDIN,
WM. LOGAN MARTIN,
Counsel for Petitioner.

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Supreme Court of the United States:

Your petitioner, Chas. C. Steward Machine Company, an Alabama corporation, files this its petition for writ of certiorari and respectfully shows:

A.

Summary Statement of Matter Involved.

Petitioner on March 2, 1937, paid to Harwell G. Davis, as Collector of Internal Revenue for the District of Alabama, the respondent herein, the sum of $46.14, as a tax

imposed on petitioner under the terms of the Social Security Act (42 U. S. C. A., §§1101-2). On the date of payment petitioner filed in due form with the respondent his claim for refund of tax so paid, setting out the grounds on which such claim was based (R. 9-11). On March 9 the Commissioner of Internal Revenue rejected such claim in full (R. 12). On March 10 petitioner filed a suit at law in the District Court of the United States for the Southern Division of the Northern District of Alabama against respondent to recover from the latter the sum of $46.14 which petitioner had so paid to him. The grounds on which petitioner based his suit were as follows:

1. The plan and scheme set up by Congress in the Social Security Act (herein sometimes called the Federal Act) has for its purpose and effect the enactment of unemployment compensation laws by the States, which are not the voluntary acts of the governments of the States, but which are brought about by the coercion and compulsion of the Federal Act.

2. Such plan and scheme violate the 9th and 10th Amendments to the Constitution of the United States in that Congress, through the Federal Act, undertakes to set up a Federal system of unemployment compensation in order to engage in the regulation of matters with which it is not concerned under the Constitution and which are wholly within the power and jurisdiction of the States to regulate. Under such plan and scheme the States surrender control of the monies collected from their citizens and attempt to surrender to the United States effectual control of the construction, operation and methods of administration of the laws of the States.

3. Under the pretext of exercising its powers, Congress, by the Federal Act, undertakes to effectuate an end which

is inconsistent with the limited grants of power to Congress in order to bring about a system of unemployment compensation, which is a matter reserved to the States or to the people thereof.

4. Under the system created by the Federal Act and the State acts enacted under the coercion thereof, the property of claimant and other employers is taken for the benefit of an arbitrarily defined class without the payment of just compensation to claimant and such other employers.

5. The taxes imposed under the Federal Act are not taxes creating revenue for the support of the Government in the accomplishment of its constitutional purposes, but are imposed for the purpose of providing funds for disbursement in the administration of State laws relating to matters beyond the control of Congress and which the Federal Act coerces and compels the States and the people thereof to enact.

6. The Federal Act violates Article I, Section 1, of the Constitution in that it attempts to vest in the Social Security Board power to determine what sums shall be paid out of the Treasury of the United States for the administration of State unemployment compensation laws without fixing any legal standards whereby the amounts to be paid to any State can be determined except by the exercise of discretion legislative in character and extent.

The cause was submitted in the District Court on March 11 on the demurrer of the respondent which set out in substance that the taxes paid by petitioner were imposed under the Constitution of the United States and were legal, valid and constitutional; that the facts stated in petitioner's complaint did not constitute a cause of action, and were mere conclusions of the pleader; did not warrant a judg-

ment by the court against the respondent and in favor of petitioner and that the respondent in so collecting the tax from the petitioner was performing his duties under the provisions of the Federal Act and under the direction of the Commissioner of Internal Revenue. The District Court on March 11 sustained respondent's demurrer and dismissed petitioner's cause (R. 16). On the same date the petitioner prayed for and was granted an appeal (R. 17, 20). The record was duly filed in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans on March 12, being cause No. 8410 on the docket of that court, and was submitted to the court on the same date. The Court of Appeals on March 20 affirmed the judgment of the District Court (R. 33).

B.

Reasons Relied on for the Allowance of the Writ.

1. The validity of the Social Security Act has not been, but should be settled by this Court. There is great public interest in the prompt settlement of this question. In the operation of the Federal-State system for the first year a total sum in excess of $200,000,000 will be imposed throughout the United States in the form of State contributions and Federal taxes.[1] This amount will be trebled the third year. The validity of the laws of twenty-nine States is made to depend on the validity of the Federal Act, such State laws providing that if Title IX, or in some instances if the Federal Act, becomes inoperative or is declared invalid by the Supreme Court of the United States, the entire State act shall be no longer operative. Until this Court determines

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[1] House Report No. 615, 74th Congress, 1st Session (April 5, 1935), page 15, Table XI; Senate Report No. 628, Ib. (May 13, 1935), page 27, Table XII.

this question employers of eight or more throughout the United States are burdened not only with the taxes imposed by such system but also with highly burdensome accounting and administrative problems.

An examination of the history of the Federal Act (Brief of Petitioner, p. 6) from its origin at the hands of the President's Committee on Economic Security, through committee hearings and debates in Congress, is convincing that Congress in its entire history has passed no act which reaches so far into the local affairs of the State and which to such an extent coerces and compels the States to adopt the system provided for them by Congress. The Agricultural Adjustment Act coerced the citizen; the Social Security Act compels the State to comply with the demands of Congress.

2. The Circuit Court of Appeals for the Fifth Circuit has, in the case in which this petition is filed, upheld the validity of the Federal Act in a way which is probably untenable and in conflict with the decisions of the Supreme Court in the cases of *Hammer* v. *Dagenhart*, 247 U. S. 251, 275 (62 L. Ed. 1101, 1107); the *Child Labor Tax Case*, 259 U. S. 20, 39-40 (66 L. Ed. 817, 820-21); *Hill* v. *Wallace*, 259 U. S. 44, 66 (66 L. Ed. 822, 829); *Schechter Poultry Corporation* v. *United States*, 295 U. S. 495, 546, 548, 550 (79 L. Ed. 1570, 1588-91); *United States* v. *Butler et al.*, 297 U. S. 1, 58-9, 61, 68, 70, 73-4 (80 L. Ed. 477, 484-6, 489-90, 492); *Carter* v. *Carter Coal Company*, 298 U. S. 238, 288-9, 294-7 (80 L. Ed. 1160, 1177, 1180-1); *Railroad Retirement Board* v. *Alton Railroad Company*, 295 U. S. 330, 350, 354, 356, 361, 374 (79 L. Ed. 1468, 1476, 1478-9, 1482, 1489).

3. The Federal Act became a law on August 14, 1935. The State of Alabama enacted its Unemployment Compensation Law (hereinafter called the Alabama Act) on September

14, 1935.[2] Approximately 689 employers have joined as plaintiffs or have participated as intervenors in suits pending in the Federal and State courts to enjoin the payment of the taxes imposed under the Alabama Act on the ground of lack of an adequate remedy at law, and have secured temporary relief which is (on this March 22) still effective The taxes imposed were required to be deposited with the registry of the respective courts or in banks by court order, which was and continues to be done by the plaintiffs and intervenors. There is at present on deposit awaiting final decision as to the validity of the Alabama Act and the Federal Act a sum in excess of $2,000,000.

On appeal to the Supreme Court of Alabama from a ruling on demurrer by the trial court, the Supreme Court on March 18, 1937, held valid both the Federal Act and the Alabama Act. Applications for rehearings will be filed and certificates of affirmance (probably) withheld until the disposition of such applications.

4. On submission of two cases to a statutory court of three judges under 28 U. S. C. A. 380, that court on December 15, 1936, found the Alabama Act in conflict with the Constitutions of the United States and of Alabama. Thsse cases are on the docket of the Supreme Court to be heard on April 7, 1937.[3]

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[2] Thirty-seven other states have enacted unemployment compensation laws patterned substantially as is the Alabama Act. Those of Massachusetts, New York and California have been upheld: *Howes Bros. Co.* v. *Unemployment Compensation Commission* (Mass.), 5 N. E. (2d) 720, decided December 31, 1936; *Chamberlain* v. *Andrews*, 271 N. Y. 1, 2 N. E. (2d) 22, aff'd. by equally divided Supreme Court, November 23, 1936; *Gillum* v. *Johnson* (Calif.), 62 Pac. (2d) 1037. The Federal Act has been upheld in the following cases: *Davis* v. *Boston and Maine Railroad* (Dist. Ct. Mass.), decided December 7, 1936; *Howes Bros. Co.* v. *Unemployment Compensation Commission, supra; Gillum* v. *Johnson, supra; Beeland Wholesale Co. et al.* v. *Davis* (Dist. Ct. Middle Dist. Ala.), affirmed C. C. A. 5th Circuit, February 16, 1937, petition for writ of certiorari pending in the Supreme Court.

[3] *Gulf States Paper Corporation* v. *Carmichael et al.* and *Southern Coal & Coke Company* v. *Carmichael et al.*

5. Because of conflicting rulings of different courts there exists so much confusion and uncertainty that it is difficult if not impossible for approximately five thousand taxpayers in the State of Alabama to determine what action to take. It is contended by the taxpayers in the cases pending in the Federal and State courts in Alabama that if the Federal Act be declared invalid no adequate remedy at law exists for the return of the contributions made by them under the Alabama Act. The Alabama taxpayers are likewise confronted, until the constitutionality of the Federal Act is determined by this Court, with the problem of making a double payment of an amount equal to ninety per cent of the excise tax imposed by Section 1101 of the Federal Act.

WHEREFORE, petitioner respectfully prays that this Court pursuant to Section 240 of the Judicial Code as amended (28 U. S. C. A., § 347 (a)) issue a writ of certiorari to the Court of Appeals for the Fifth Circuit, directing that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 8410, *Chas. C. Steward Machine Company, Appellant,* v. *Harwell G. Davis, Individually and as Collector of Internal Revenue, Appellee;* to the end that such cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment herein of the Circuit Court of Appeals be reversed by this Court.

(A supporting brief is filed separately.)

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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